

International Labour Conference
84th (Maritime) Session 1996

REPORT I

**Revision of the
Labour Inspection (Seamen)
Recommendation,
1926 (No. 28)**

INTERNATIONAL LABOUR OFFICE GENEVA



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First item on the agenda

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Introduction

At its 262nd Session (March-April 1995) the Governing Body of the International Labour Office examined the report of the Tripartite Meeting on Maritime Labour Standards (Geneva, November-December 1994) and decided to include an item on the revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), in the agenda of the 84th (Maritime) Session of the International Labour Conference.

It also decided that, in accordance with article 38, paragraph 4(b), of the Standing Orders of the International Labour Conference, the Office would draw up a final report on this item on the basis of the work of the Tripartite Meeting on Maritime Labour Standards and of any further information available to the Office. As part of a series of measures to safeguard the financial position of the ILO, the Governing Body, at its 263rd Session (June 1995), decided to postpone the holding of the Maritime Session of the Conference scheduled for January 1996. At its 264th Session (November 1995) the Governing Body decided that the Conference should be held at the end of 1996 or at the beginning of 1997.

The background to these decisions is summarized below.

The Fifth Session of the International Labour Conference adopted the Labour Inspection Recommendation, 1923 (No. 20), which, owing to the different nature and conditions of work at sea, did not apply to seafarers. At the Ninth Session of the Conference in 1926, however, the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), was adopted. This instrument was intended to lay down the fundamental principles for effectively organizing means of supervising the enforcement of labour legislation, derived from the rules and methods by which the inspection of conditions of work has been instituted and practised in different countries. Over the years, Recommendation No. 28 has assisted countries in the institution or reorganization of their system of inspection of seafarers' working conditions and the successful enforcement of measures for the protection of seafarers.

Subsequently, the question of labour inspection for all categories of workers continued to receive the attention of the ILO, resulting in the adoption by the Conference of the following seven additional instruments:

- the Inspection (Building) Recommendation, 1937 (No. 54);
- the Labour Inspectorates (Indigenous Workers) Recommendation, 1939 (No. 59);
- the Labour Inspection Convention, 1947 (No. 81), and Recommendation, 1947 (No. 81);
- the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82);
- the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and Recommendation, 1969 (No. 133).

In addition, one part of the Plantations Convention, 1958 (No. 110), consists of a substantial number of provisions on the subject of labour inspection.

Some of these instruments were adopted to supplement earlier ones which were no longer adequate. However, in the case of maritime labour inspection, Recommendation No. 28 remains in the form adopted although, over the past 20 years, views have been expressed from time to time at ILO maritime meetings and within the Office regarding the need to revise the text.

Such views are based on the fact that, since the adoption of Recommendation No. 28, substantial developments have taken place in the nature of seafarers' working conditions and in national laws, regulations and practices governing these conditions. Over the years, growing importance has been attached by maritime countries throughout the world to eliminating the operation of ships which are substandard in terms of general safety or crew conditions. Thus, although explicit measures of inspection or other means of supervision are included in a whole series of ILO maritime Conventions going back as far as the Minimum Age (Sea) Convention, 1920 (No. 7), it was in 1958 that the ILO adopted the Seafarers' Engagement (Foreign Vessels)

Recommendation (No. 107) and the Social Conditions and Safety (Seafarers) Recommendation (No. 108). Essentially, these Recommendations together elaborate on matters concerning which a flag State should exercise effective jurisdiction and control over its ships as regards the safety and welfare of seafarers, and urge that seafarers be discouraged from joining foreign flagships unless the conditions of engagement are "generally equivalent" to those applicable under collective agreements and social standards accepted by bona fide organizations of shipowners and seafarers of maritime countries where such agreements and standards are traditionally observed.

In the framework of the ILO's continuing consideration of the question of substandard ships, and in response to the needs identified in Recommendations Nos. 107 and 108, the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the accompanying Merchant Shipping (Improvement of Standards) Recommendation (No. 155), were adopted. Briefly, Convention No. 147 requires ratifying States to apply minimum standards of health, safety and conditions for crews of national flagships, as prescribed in part by a number of international labour Conventions listed in an appendix. One of its requirements is that ratifying States verify by inspection or other appropriate means that national ships comply with applicable international labour Conventions which they have ratified, with laws and regulations concerning minimum standards on safety, social security and seafarers' conditions of employment and living arrangements on board ship and, where appropriate under national law, that such ships comply with applicable collective agreements. Further, Convention No. 147 refers to the ability of port state authorities to take action in respect of a visiting foreign flagship upon receipt of a complaint or in the light of evidence that the ship does not conform to the minimum standards prescribed by the Convention. Recommendation No. 155 proposes an extension of the list of standards which should be considered as the minimum labour conditions in merchant shipping, as well as an improvement of the minimum laid down by particular standards specified in the Appendix to Convention No. 147.

The desirability of revising Recommendation No. 28 was affirmed by a Working Party on International Labour Standards established by the Governing Body at its 228th Session (November 1984) to review the classification of all existing ILO Conventions and Recommendations and possible subjects for new standards which had been approved by the Governing Body in 1979, and to submit a revised classification for approval. A revised classification was approved by the Governing Body at its 235th Session (March 1987).

At its 244th Session (November 1989) the Governing Body decided to place on the agenda of the 26th Session of the Joint Maritime Commission an item entitled "Revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28)".

The report submitted to that session of the Commission was prepared by the Office on the basis of replies received from 59 member States to a questionnaire requesting information on national law and practice regarding inspection of the conditions of work of seafarers with a view to revising Recommendation No. 28. Following consideration of the report the Commission adopted a resolution requesting the Governing Body to place the revision of Recommendation No. 28 on the agenda of an early Maritime Session of the International Labour Conference with a view to adopting a Convention on labour inspection of seafarers and, in addition, guidelines supplementing the various existing instruments to provide for inspection, especially in cases where one or more inspection authorities are involved.

The Governing Body, at its 252nd Session (March 1992), took note of the resolution as well as another resolution adopted by the Commission concerning the convening of a Preparatory Technical Maritime Conference and a Maritime Session of the International Labour Conference. At its 253rd Session (May-June 1992), the Governing Body, following consultations with the leaders of the Shipowners' and Seafarers' groups of the Commission, discussed the possibility of holding a tripartite meeting instead of a Preparatory Technical Maritime Conference during the 1994-95 biennium. At its 254th Session (November 1992), the

Governing Body decided to include in the programme of sectoral meetings for the 1994-95 biennium a Tripartite Meeting on Maritime Labour Standards with an agenda including, inter alia, an item on the revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28). Technically, the purpose of the Meeting was the same as that of a Preparatory Technical Maritime Conference.

Accordingly, the Office requested the governments of member States to provide information on any developments that might have occurred in their countries subsequent to the situation described in their replies to the questionnaire sent by the Office prior to the 26th Session of the Joint Maritime Commission, and to reply to some additional questions included in the questionnaire that was circulated to member States as a result of the discussions of the Commission. The report¹ on this question prepared by the Office for submission to the Tripartite Meeting on Maritime Labour Standards reproduced the substance of the information submitted to the Joint Maritime Commission in October 1991, together with information provided by governments on more recent developments. It also contained information on additional issues corresponding to the supplementary questions included in the questionnaire circulated prior to the Tripartite Meeting. Furthermore, it contained Proposed Conclusions reflecting the progress achieved in the various countries in the field of maritime labour inspection and taking into account the views expressed by the Joint Maritime Commission. These Conclusions are reproduced in Chapter I of this report.

Following discussion of the Office report, the Tripartite Meeting on Maritime Labour Standards adopted a revised set of Conclusions for submission to the International Labour Conference at its 84th (Maritime) Session. The proceedings of the Tripartite Meeting on Maritime Labour Standards with respect to this item, including extracts from the report of the Committee set up by the Tripartite Meeting to consider the question, the Proposed Conclusions submitted by that Committee and a summary of the Tripartite Meeting's discussions in plenary sitting are set out in Chapter II. Chapter III contains the English and the French versions of a proposed Convention and a proposed Recommendation concerning maritime labour inspection based on the Conclusions adopted by the Tripartite Meeting on Maritime Labour Standards. If the Conference so decides, the proposed Convention and Recommendation may serve as the basis for discussion on this item at a forthcoming Maritime Session.

¹ ILO: *Revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28)*, Report I, Tripartite Meeting on Maritime Labour Standards, Geneva, 1994.

I. Proposed Conclusions concerning the inspection of seafarers' working and living conditions, prepared by the Office for the Tripartite Meeting on Maritime Labour Standards

1. New instruments concerning the inspection of seafarers' working and living conditions should be adopted.
2. The instruments should take the form of a Convention supplemented by a Recommendation, which shall precede¹ the Labour Inspection (Seamen) Recommendation, 1926 (No. 28).
3. The instruments should refer in their Preamble to the changes in the nature of the shipping industry and, as a consequence thereof, the changes in seafarers' employment since the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), was adopted. Reference should also be made to the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), and the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

Proposed Conclusions with a view to a Convention

I. Scope and definitions

4. (1) The Convention should apply to every seagoing ship, whether publicly or privately owned, which is registered in the territory of a Member for which the Convention is in force and is ordinarily engaged in commercial maritime navigation.
- (2) Nothing in the Convention should be deemed to limit the right of any State to exercise its jurisdiction, including inspection powers, over foreign-registered ships in accordance with relevant rules of international law.
- (3) To the extent it deems practicable, after consultation with the representative organizations of fishing vessels' owners and fishermen, the central coordinating authority should apply the provisions of the Convention to commercial maritime fishing vessels.
- (4) In the event of any doubt as to whether or not any ships are to be regarded as engaged in commercial maritime navigation or commercial maritime fishing for the purposes of the Convention, the question should be determined by the central coordinating authority after consultation with the organizations of shipowners, seafarers and fishermen concerned.
5. For the purposes of the Convention the term "seafarers" should mean persons who are employed in any capacity on board a seagoing ship to which the Convention applies.
6. For the purposes of the Convention the term "central coordinating authority" should mean a minister, government department or other authority having power to issue and supervise the implementation of regulations, orders, or other instructions having the force of law in respect of inspection of seafarers' working and living conditions in relation to any ship registered in the territory of the Member or to any ship within territorial waters.
7. For the purposes of the Convention the term "legal provisions" should include, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred.

¹ At the Tripartite Meeting, the Office pointed out that the English text should have been "supersede" instead of "precede".

8. For the purposes of the Convention the term "maritime labour inspector" should mean any public official with the responsibility for inspecting any aspect of seafarers' working and living conditions.

II. Organization of inspection

9. (1) Each Member for which the Convention is in force should maintain a system of inspection of seafarers' living and working conditions.

(2) The central coordinating authority should coordinate the inspections carried out by different services or authorities whose functions are wholly or partly concerned with seafarers' working and living conditions, establish common principles to be observed by those services or authorities and guide their methods of work.

10. The functions of the system of inspection of seafarers' living and working conditions should include:

- (a) securing the enforcement of the legal provisions relating to the conditions of life and work and the protection of seafarers, such as provisions relating to minimum age, medical examination, articles of agreement, certificates of competency, food and catering, crew accommodation, hours of work, manning, prevention of occupational accidents, medical care, sickness and injury benefits, repatriation, and other connected matters, in so far as such provisions are enforceable by maritime labour inspectors;
- (b) supplying technical information and advice to shipowners and seafarers concerning the most effective means of complying with the legal provisions, and of improving seafarers' living and working conditions; and
- (c) bringing to the attention of the central coordinating authority deficiencies or abuses not specifically covered by existing legal provisions and submitting to it proposals for the improvement of laws and regulations.

11. The central coordinating authority should:

- (a) establish simple and confidential procedures to enable it to receive information concerning infringements of legal provisions presented by seafarers directly or through their representatives;
- (b) enable inspectors to investigate such matters promptly; and
- (c) enable masters to call for an inspection when they consider it necessary.

III. Annual inspection

12. (1) Every Member which has ratified the Convention should ensure that all ships registered in its territory are inspected at least annually to verify that the living and working conditions on board the ship conform to national laws or regulations on the date of inspection.

(2) Where no deficiencies are found in the course of the inspection, the central coordinating authority should issue a certificate of conformity in a national language and in English.

IV. Status, duties and powers of inspectors

13. (1) Maritime labour inspectors should be public officials whose status and conditions of service are such that they are assured of stability of employment and are independent of changes of government and of improper external influences.

(2) Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, maritime labour inspectors should be recruited with sole regard to their qualifications for the performance of their duties, including sufficient

knowledge of seafarers' living and working conditions and of the English language, and completion of adequate training.

(3) The means for ascertaining such qualifications should be determined by the central coordinating authority.

14. (1) Each Member should take the necessary measures to ensure that duly qualified technical experts and specialists are associated, as needed, in the work of maritime labour inspection.

(2) Measures should be taken to give maritime labour inspectors appropriate further training during their employment.

15. (1) The number of maritime labour inspectors should be sufficient to secure the effective discharge of their duties.

(2) Maritime labour inspectors should not be entrusted with duties which might, because of their number or nature, interfere with effective maritime labour inspection or prejudice in any way their authority and impartiality in their relations with shipowners and seafarers.

16. All maritime labour inspectors should be furnished with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.

17. Maritime labour inspectors provided with proper credentials should be empowered:

- (a) to board a ship or enter other premises liable to inspection, freely and without previous notice at any hour of the day or night; and
- (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed, and in particular:
 - (i) to question, alone or in the presence of witnesses, the shipowner, the seafarers or any other person on any matter concerning the application of the legal provisions;
 - (ii) to require the production of any books, log books, registers, certificates or other information or documents related to matters subject to inspection, in order to see that they are in conformity with the legal provisions, and to make copies;
 - (iii) to take or remove for purposes of analysis samples of products, cargo, drinking-water, provisions, and materials and substances used or handled, subject to the shipowner or the representative of the shipowner being notified of any of the above being removed or taken for such purpose; and
 - (iv) to enforce the posting of notices required by the legal provisions.

18. On the occasion of an inspection, maritime labour inspectors should provide notification of their presence to the shipowner, or the shipowner's representative, and the seafarers or their representatives, unless the inspectors consider that such notification could be prejudicial to the performance of their duties.

19. (1) Maritime labour inspectors should be empowered to take steps with a view to remedying any deficiencies observed which they have reasonable cause to believe constitute a threat to the health or safety of seafarers.

(2) In the event of an imminent danger to the health or safety of seafarers, maritime labour inspectors should be empowered to take measures with immediate executory force, and, under conditions prescribed by the central coordinating authority, to prohibit any ship from leaving port until necessary measures have been taken, subject to any right to appeal to a legal or administrative authority. Such measures should not result in the ship being unreasonably detained or delayed.

20. Members which have ratified the Convention should ensure that the central coordinating authority should be notified of any occupational injuries or diseases occurring on board a ship in such cases and in such manner as may be prescribed by national laws or regulations.

21. Maritime labour inspectors —

- (a) should be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect;
- (b) should be bound on pain of appropriate penalties or disciplinary measures not to reveal, even after leaving the service, any commercial secrets or confidential working processes which may come to their knowledge in the course of their duties; and
- (c) should treat as absolutely confidential the source of any complaint alleging a danger or deficiency in relation to working and living conditions or an infringement of legal provisions and should give no intimation to the shipowner or the shipowner's representative that an inspection was made as a consequence of the receipt of such a complaint.

V. Penalties

22. (1) Persons who fail to observe legal provisions enforceable by maritime labour inspectors should be liable to prompt legal proceedings without previous warning, provided that exceptions may be made by national laws or regulations in respect of cases in which previous notice to carry out remedial or preventive measures is to be given.

(2) It should be left to the discretion of maritime labour inspectors to give warnings and advice instead of instituting or recommending proceedings.

23. Adequate penalties for violations of the legal provisions enforceable by maritime labour inspectors and for obstructing maritime labour inspectors in the performance of their duties should be provided for by national laws or regulations and effectively enforced.

VI. Reports

24. Maritime labour inspectors should submit a report of each inspection to the central coordinating authority.

25. Maritime labour inspectors should also be required to submit to the central coordinating authority periodic reports on the results of their inspection activities, as frequently as it may prescribe and at least once a year.

26. The central coordinating authority should publish an annual report on the work of the inspection services under its coordination, within a reasonable time after the end of the year to which it relates and in any case within six months.

27. Reports referred to in the three preceding points should be drawn up in such manner and should deal with such subjects as may from time to time be prescribed by the central coordinating authority.

Proposed Conclusions with a view to a Recommendation

I. General

28. The provisions of the proposed Recommendation should be applied in conjunction with those of the proposed Convention.

II. Cooperation and coordination

29. The central coordinating authority should make appropriate arrangements to promote effective cooperation between public and private institutions concerned with seafarers' working and living conditions.

30. Collaboration between officials of the maritime labour inspection services and shipowners, seafarers and their organizations should be through regular consultations, preferably in tripartite committees on labour inspection.

III. Organization of inspection

31. The central coordinating authority and any other service or authority whose function is wholly or partly concerned with the inspection of seafarers' working and living conditions should have the resources necessary to fulfil their functions.

32. The number of maritime labour inspectors should be sufficient to secure the effective discharge of their duties and should be determined with due regard to:

- (a) the importance of the duties which the inspectors have to perform, in particular —
 - (i) the number, nature and size of ships liable to inspection; and
 - (ii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which inspection must be carried out in order to be effective.

33. The premises to be furnished to labour inspectors under point 16 of the Proposed Conclusions should include local offices that are so located as to take account of the geographical situation of ports at which seagoing ships may call, suitably equipped in accordance with the requirements of the service, and, in so far as possible, accessible to the seafarers and other persons concerned.

IV. Reports

34. The annual report published by the central coordinating authority in accordance with point 26 of the Proposed Conclusions should contain:

- (a) a list of laws and regulations in force relevant to the working and living conditions of the seafarers, and any amendments thereto which have come into operation during the year;
- (b) staffing of maritime labour inspection;
- (c) statistics of ships subject to inspection and ships actually inspected;
- (d) statistics of seafarers subject to the laws and regulations referred to in subparagraph (a);
- (e) statistics and information on infringements of legislation ascertained, penalties imposed and cases of detention of ships;
- (f) statistics of employment injuries and occupational diseases on board ship; and
- (g) information on the number of certificates issued in accordance with point 12 of the Proposed Conclusions.

II. Proceedings of the Tripartite Meeting on Maritime Labour Standards concerning revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28)

Extracts from the report of the Committee on Labour Inspection

Composition of the Committee

1. The Committee on Labour Inspection was set up by the Meeting at its third plenary sitting on 29 November 1994 to consider the first item of its agenda — revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), and the fourth item, the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147).

2. The Committee was composed of 62 members: 30 Government members, 14 Shipowner members and 18 Seafarer members.

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4. The Committee elected its officers as follows:

Chairman: Mr. A. Roovers (Government member, Netherlands)

Vice-Chairmen: Mr. J. Cox (Shipowner member, United States)

Mr. J.-Y. Legouas (Seafarer member, France)

Reporter: Mr. C. Hamilton (Government member, United Kingdom)

5. The Committee held seven sittings. It set up one working group on the first item of the main agenda, another on the fourth item of the main agenda, and a drafting committee.
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General discussion

33. The representative of the Secretary-General introduced Report I on the revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), by tracing the origins of a separate system of labour inspection for merchant shipping to the First Session of the Joint Maritime Commission (JMC) in 1920 and to the International Labour Conference in 1923, which had adopted a resolution requesting the Governing Body to consider the possibility of including in the agenda of a forthcoming session of the Conference, the institution of such a special inspection system. Unlike other ILO instruments on labour inspection for all categories of workers which had resulted in the adoption of various instruments, Recommendation No. 28 on maritime labour inspection had remained in its original form. Over the years the need was recognized to revise the Recommendation to take into account the substantial developments that had taken place in the nature of the conditions of work of seafarers and in the national laws, regulations and practices governing these conditions. He then traced the decisions of the 244th Session of the Governing Body in November 1989 and of the 26th Session of the JMC in bringing this item to the agenda of the Meeting. He pointed out that Report I updated the report submitted to the 26th Session of the JMC and included the replies received from 76 States to the questionnaire sent to Members.

34. The Seafarer members commended the quality of Report I, and appreciated the interest shown in Recommendation No. 28, which in their view testified to its importance in the context of Convention No. 147, IMO resolutions and decisions of the European Union regarding inspection of ships and port state control measures in particular. Areas of special interest to

them included the fields of inspection; the question of the training, status and conditions of work of inspectors; and the question of collaboration amongst inspectors.

35. The Shipowner members agreed with the Seafarer members on the importance of Recommendation No. 28 on maritime labour inspection and congratulated the Office on the development of this report for further discussion. They also agreed there was a need to update Recommendation No. 28 to take into account changes that had come about since 1926. They were not fully convinced that the adoption of a Convention on the subject was the most appropriate solution and expressed their preference for a Recommendation. None the less they expressed their readiness to re-examine their position if the Government members, on whom the burden of inspection fell, conveyed a general preference for a Convention. They considered questions relating to flag or port state control required careful examination.

36. The Government member of Denmark welcomed the revision of Recommendation No. 28. He said the requirement that the annual inspection should in all cases be carried out by the competent authority was not acceptable. The majority of Danish ships never called at Danish ports. Most statutory inspections were therefore carried out by authorized organizations. In his view, a similar arrangement concerning control of working and living conditions would be acceptable. It was also his opinion that parts of the inspection could be entrusted to a safety body on board the ship. He considered that technological advances would allow certain types of inspections such as minimum age, medical examination, certificates of competency, etc., to be conducted by remote means, without being on board while others such as food and catering, crew accommodation and accident prevention might still require on-the-spot inspections. He was of the view that the work of the Committee would be facilitated if an early understanding were reached regarding the choice between a Convention and a Recommendation.

37. The Government member of France welcomed the idea of a Convention on the subject, provided that there was worldwide acceptance of ILO social standards, which could be sought through port state control. He expressed reservations on the feasibility of issuing certificates of conformity after each visit as, in his view, was proposed in Report I.

38. The Government member of Sweden said that the increase in the duties of administrations because of the proposed instrument did not in his opinion constitute an undue burden. He added that most of the controls by the flag State which maintained the links between the ships and the flag State should be carried out by the State and not left to private or other organizations.

39. The Government member of Norway welcomed the adoption of a Convention on the subject as long as it was a flexible instrument and did not entail an unnecessarily expensive system of inspection, but instead also made use of existing inspection and control systems. He said that discussing the contents of the proposed instrument first would help resolve the question of the form of the instrument.

40. The Government member of the Russian Federation was in favour of the revision of the Recommendation in the form of both a Convention and a new Recommendation. He recalled that in his country labour inspection used to be carried out in the past by the trade unions and not by the Government. He stated that currently there were labour inspection systems covering occupational health and safety and conditions of work. He wondered about the scope of the inspections in question and whether certificates of conformity would be accepted by other countries.

41. The Government member of Liberia considered that labour inspection regarding safety aspects and working and living conditions was the responsibility of the flag State. He said the provisions of Recommendation No. 28 still served a good purpose but that there was a need for its improvement, as was proposed in the report. His Government favoured a Recommendation because he attributed Recommendation No. 28's success to its wide acceptance. There was a need to look at inspectors' qualifications and training.

42. The Government member of the United States considered that matters of maritime labour inspection should be seen in the context of Convention No. 147. His Government was not in favour of transforming Recommendation No. 28 into a Convention.

Consideration of the proposed text contained in Report I

General discussion on points 1 to 12 of the Proposed Conclusions

Form of the instrument or instruments

43. The Shipowner members gave the background to the amendments they were submitting to points 1, 2 and 3 of the Proposed Conclusions, all of which concerned the same issue of the choice between a Convention and a Recommendation for the proposed instrument on maritime labour inspection. Their group preferred a Recommendation, not with a view to detracting from the importance of the instrument, but only to ensure its widest acceptance by member States. The main responsibility in these matters, in their opinion, rested with governments and they considered that the proposed instrument would be more acceptable to most governments as a Recommendation. If, however, governments found a Convention to be preferable, they could also participate in its elaboration. They attached great importance to the need to limit the proposed instrument to flag state control measures only and not to extend it to port state control matters, in order to ensure its universal acceptability.

44. The Seafarer members considered this to be an important subject on which they strongly favoured maintaining both a Convention and a Recommendation and could not accept the adoption of only a Recommendation.

45. The Government member of Sweden, supported by the Government members of France and the Netherlands, was in favour of a Convention on maritime labour inspection for the reasons expressed previously. He said the role of flag States, which was under discussion in the IMO, should be linked with the system to be proposed by the instruments under discussion in this Committee. The Government members of the Russian Federation, Germany and the Philippines also supported a Convention.

46. The Government members of Denmark and Norway stated that their final decision on the choice between a Convention and a Recommendation would depend on the results of the Committee's deliberations.

47. The Government member of Egypt was in favour of both a Convention and a Recommendation, as the welfare of seafarers was at stake.

48. The Government member of Australia, supported by the Government member of the United Kingdom, agreed that flexibility was important, but could nevertheless accept a Convention. He further stated that the proposed instrument contained several administrative matters that many governments could find difficulty in accepting in a Convention.

49. The Government member of the United States associated himself with the statement made by the Government member of Australia regarding the need for flexibility of the instrument and therefore preferred a Recommendation. This was supported by the Government member of Argentina.

Port state control

50. The Shipowner members, supported by the Government member of Denmark, requested the Committee to reach a consensus on the need to exclude questions of port state control from the proposed instrument before setting up a working group and entrusting it with the task of looking into the various amendments submitted.

51. The Seafarer members found such exclusion unacceptable and could not envisage going into a working group with such a mandate.

52. The Government member of France considered that the question required debate and a decision before being referred to a working group.

53. The deputy representative of the Secretary-General explained that the only reference to port state control in the Proposed Conclusions was in point 4(2) and that point 12 of the same Conclusions referred to flag state control. He said point 4(2) of the Proposed Conclusions was worded to say that the rights of a State under international law could not be limited by anything in the possible Convention, so that the Committee might legitimately consider point 4(2) superfluous.

54. The Government member of Australia considered that any system of inspection elaborated by the proposed instrument could be adapted to serve for port state control purposes if desired by a government.

55. The Shipowner members agreed with the statement made by the deputy representative of the Secretary-General.

56. The Committee then set up a working group to look into the various amendments submitted with a view to elaborating the elements that should go into a Convention and those that should be included in a Recommendation, but to consider only questions of flag state control.

57. In an interim statement to the Committee the Chairman of the working group recalled that it had considered 42 submissions containing various amendments regarding points 1 to 12 of the Proposed Conclusions and reached agreement as reflected in the draft conclusions in Appendix II to this report.

58. The Shipowner and Seafarer members, as well as the Government members of Denmark, Norway and France, spoke on the question of applicability of port state inspection to the Proposed Conclusions.

59. The Shipowner members said that while they were not, in principle, against port state control, they did not consider that it should be included in a proposed instrument dealing with requirements for establishing a flag state labour inspection programme. They wished for the Committee to discuss and decide the issue first before referring it to the working group and to the drafting group.

60. The Seafarer members said they were in favour of the proposed instrument including port state control and referred to the unfortunate reality of the existence of many unsafe vessels as witnessed by two significant accidents within the same week. They were not convinced by formal arguments made by the Shipowner members for excluding port state control from the proposed instrument. They said they would go along with the consensus in the Committee but would like to have the question resolved once a complete review of the whole text of the proposed instrument had been made.

61. The Government members of Denmark and Norway, supported by the Government members of China and Liberia, argued that there was no need to refer to port state control in the proposed instrument, since Convention No. 147 fully covered this question.

62. The Government member of France agreed with the need to resolve any ambiguity regarding the question of port state control and wondered if the ILO also had not reached the point of sufficiency of international standards and that it might be high time to devote itself to ensuring their more effective implementation.

63. The Government members of France, Germany, the Netherlands, Spain and Sweden emphasized that, complementary to flag state control, port state control should focus more on the inspection of working and living conditions of seafarers. They therefore recommended that attention should be given to this issue at the forthcoming Maritime Session of the Conference. These aspects should also be considered within the framework of the partial revision of Convention No. 147.

64. The Government member of Australia felt that the question was not whether one was in favour of or against port state control but whether the proposed instrument should make

reference to it. She asked the Government members of the Committee to reach a decision on this question.

65. The Government members of Australia, Canada, Denmark, Greece, Norway and the United Kingdom considered that the revision of Recommendation No. 28 should not be considered within the context of the partial revision of Convention No. 147.

66. The Seafarer members stated that they would not press any further in the Committee regarding port state control, but they wished for a separate Recommendation on international inspection of ships, which would read as follows: "Member States are recommended that when inspecting any ship, irrespective of country of registration, they should apply the provisions relevant to the system of inspection contained in the Convention/Recommendation on labour inspection in addition to the provisions contained in the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and in any other relevant Convention, Recommendation or instrument." They requested that this be placed in the report.

67. The Shipowner members noted their concern that a debate on the merits of port state control and the draft Convention took place without the benefit of prior study by most participants. While supporting the concept of port state control, the Shipowners believed the concept was not appropriate to the draft Convention. Nevertheless, they would remain open to listening to all debates at the Conference.

Annual inspections

68. The Government members of Greece, India, Japan and the Netherlands spoke of the question of the requirement, contained in point 12(1) of the Proposed Conclusions, of ensuring that annual inspections of all vessels registered in the territory of a ratifying State were duly made. The Government member of Japan recalled that he had earlier on in the deliberations of the Committee raised the difficulty his Government would have in complying with such a mandatory provision in a Convention on maritime labour inspection. He reiterated his Government's suggestion of making this a goal that best efforts should be made to attain. The Government member of the Russian Federation, considering that it was not possible to ensure annual inspections in all countries, suggested inserting the words "as a rule" between the word "are" and the words "inspected annually" in point 12(1) of the Proposed Conclusions. This was supported by the Government member of Greece, who recalled his own previous amendment to the same point, and was acceptable to the Government member of Japan.

69. The Government member of India found that the amendment put forward by the Government member of the Russian Federation did not go in the direction of providing the flexibility the Government member of Japan had sought. He was therefore surprised that the latter had accepted the amendment and suggested to replace the words "as a rule" by "as far as possible".

70. Both the Shipowner and Seafarer members considered that this point had been fully discussed in the working group and were therefore not prepared to reopen discussion in the Committee.

71. The Government member of Japan withdrew his request to have the amendment discussed by the Committee, but he still believed this issue needed to be debated seriously and in depth in the future. He wanted the report of the Committee to show that this point had been raised by his delegation.

72. The Government member of Greece expressed his reservations on point 12(1) and said he would be submitting an amendment to it, adding that in his point of view inspection of seafarers' working conditions, such as payment of wages, freedom of association, etc. cannot be carried out by the organizations referred to in the proposed point 9(3).

73. The Government member of Japan said that his country would find it difficult to comply with a requirement to ensure annual inspection of vessels, given the size of its fleet. He argued that annual inspection should be an objective and not a strict requirement.

74. The Seafarer members considered that working and living conditions of seafarers should not be inspected any less frequently than annually, and that the proposed instruments contained sufficient flexibility as to the method of inspection to meet the concerns expressed by a number of the Governments.

75. The Committee decided, in the light of this discussion, to propose the new wording of point 12 of the Office draft, which appears in the Committee's draft conclusions.

Central coordinating authority

76. The Government member of France, supported by the Government member of Sweden, expressed his reservations regarding a suggested new point 9(3). Unlike the technical standards of IMO instruments, inspection of social matters was in their view subjective by nature and thus required public inspection. The Government member of France therefore suggested the inclusion of the following wording in point 9(3): only in the case of these organizations either being public or otherwise being recognized as competent and independent.

77. The Government member of the United Kingdom agreed that inspection was the responsibility of the central coordinating authority and there was no need to add the wording suggested by the Government member of France.

Application to fishing vessels

78. The Seafarer members said there seemed to be some clarification needed regarding the definition of the term "seafarer" but that they would address the issue in the working group. They considered that it was not justifiable to distinguish fishing vessels from other commercial vessels as far as navigation was concerned and that fishermen should be included in the scope of the Convention.

79. The Government members of Japan, the Netherlands, Norway and the Russian Federation addressed the question of whether the instrument should cover fishermen. The Government members of Japan and the Russian Federation supported their inclusion as these vessels functioned in the same manner as other merchant vessels. The Government members of the Russian Federation and the Netherlands felt, however, that these interests were not represented here but hoped they would be at the Conference. The Government member of Norway considered that it should be left to governments to decide the question of inspecting fishing vessels.

80. The Shipowner members, regarding points 4(3) and (4) on fishing vessels, felt they could not speak for fishing vessel owners. In keeping with the spirit of Recommendation No. 28, it should be left for each government to determine whether to extend its inspection to fishing vessels. To facilitate the work of the Committee their group withdrew the proposed amendments to delete references to fishermen in the Proposed Conclusions.

* * *

81. The Chairman of the working group referred to the legal advice from the Office indicating that there could be a general link to the Convention in the Preamble to the Recommendation; and that reference could, if the Committee wished, be made to the United Nations Convention on the Law of the Sea, 1982, and to the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82).

* * *

82. The Committee approved the action suggested by the working group and the amendments submitted in respect of points 1 to 12 of the draft conclusions in Report I were accepted, rejected, withdrawn or subamended accordingly.

General discussion on points 13 to 21 of the Proposed Conclusions

83. The Chairman of the working group said the group had considered 65 amendments concerning points 13 to 21 of the Proposed Conclusions and reached agreement as reflected in the draft conclusions in Appendix II to this report.

84. He indicated that a first new point should be added to the Convention or Recommendation concerning the question of detention of ships. This appears in point 15 of the draft conclusions.

85. He also indicated that a second new point should be added concerning the discretion of inspectors to bring matters to the attention of those concerned. This appears in point 35(d) of the draft conclusions.

86. He finally indicated that a third new point had been retained concerning inspection pursuant to a major incident. This appears in point 17(2) of the draft conclusions.

87. The Government member of the United Kingdom considered that the time-limit of one month set in the proposed new point was unduly short in view of possible pending criminal prosecutions.

88. The Committee approved the action suggested by the working group and the amendments submitted in respect of points 13 to 21 of the draft conclusions in Report I were accepted, rejected, withdrawn or subamended accordingly.

General discussion on points 22 to 27 of the Proposed Conclusions

89. The Chairman of the working group said they had considered 25 submissions and reached agreement as reflected in the draft conclusions in Appendix II to this report.

90. The Committee approved the action suggested by the working group and the amendments submitted in respect of points 22 to 27 of the draft conclusions in Report I were accepted, rejected, withdrawn or subamended accordingly.

General discussion on points 28 to 34 of the Proposed Conclusions

91. The Chairman of the working group said they had considered 18 submissions and reached agreement as reflected in the draft conclusions in Appendix II to this report.

92. The Government members of Denmark and Norway recalled their amendment to point 33(a) of the Proposed Conclusions, which would have, in their view, permitted the use of existing bodies on board for the inspection referred to in point 9(1). They thought this amendment, which referred to possible inspection by safety committees on board ship, gave the necessary flexibility in the inspection system and would help to ensure that annual labour inspections take place. The inspection reports from the safety committee could then be submitted to the central coordinating authority. They argued that their proposal should be further discussed at the forthcoming Maritime Session of the Conference.

93. The Government member of the Netherlands said he could not accept mandatory annual labour inspections and supported the proposal of the Government members of Denmark and Norway for the added flexibility it provided.

94. The Committee approved the action suggested by the working group, and the amendments submitted in respect of points 28 to 34 of the draft conclusions in Report I were accepted, rejected, withdrawn or subamended accordingly.

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Adoption of the report

97. At its seventh sitting on 8 December 1994, the Committee unanimously adopted the present report on its proceedings, together with the appendices, for submission to the plenary of the Meeting.

.....

Proposed Conclusions concerning revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), submitted by the Committee

1. New instruments concerning the inspection of seafarers' working and living conditions should be adopted.
2. The instruments should take the form of a Convention supplemented by a Recommendation, which together should supersede the Labour Inspection (Seamen) Recommendation, 1926 (No. 28).
3. The instruments should refer in their Preamble to the changes in the nature of the shipping industry and, as a consequence thereof, the changes in seafarers' employment since the Labour Inspection Recommendation, 1926 (No. 28), was adopted. Reference should also be made to the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection Recommendation, 1947 (No. 81), the Labour Inspection (Mining and Transport) Recommendation, 1947 (No. 82), the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the United Nations Convention on the Law of the Sea, 1982.

Proposed Conclusions with a view to a Convention

1. Scope and definitions

4. (1) Except as otherwise provided in this point, this Convention should apply to every seagoing ship registered in the territory of the Member, whether publicly or privately owned, which is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose.
 - (2) National laws or regulations should determine which ships are to be regarded as seagoing ships for the purpose of this Convention.
 - (3) This Convention should apply to seagoing tugs.
 - (4) This Convention should not apply to:
 - (a) ships primarily propelled by sail, whether or not they are fitted with auxiliary engines;
 - (b) small vessels and, when not engaged in navigation, vessels such as oil rigs and drilling platforms. The decision as to which vessels are covered by this subparagraph should be taken by the central coordinating authority in each country in consultation with the most representative organizations of shipowners and seafarers.
 - (5) To the extent it deems practicable, after consultation with the representative organizations of fishing vessels' owners and fishermen, the central coordinating authority should apply the provisions of the Convention to commercial maritime fishing vessels.
 - (6) In the event of any doubt as to whether or not any ships are to be regarded as engaged in commercial maritime operations or commercial maritime fishing for the purposes of the Convention, the question should be determined by the central coordinating authority after consultation with the organizations of shipowners, seafarers and fishermen concerned.
5. For the purposes of the Convention the term "seafarers" should mean persons who are employed in any capacity on board a seagoing ship to which the Convention applies. In the event of any doubt whether any categories of persons are to be regarded as seafarers for the

purpose of this Convention, the question shall be determined by the central coordinating authority in each country after consultation with the organizations of shipowners and seafarers concerned.

6. For the purposes of the Convention the term "central coordinating authority" should mean a minister, government department or other authority having power to issue and supervise the implementation of regulations, orders or other instructions having the force of law in respect of inspection of seafarers' working and living conditions in relation to any ship registered in the territory of the Member.

7. For the purposes of the Convention the term "legal provisions" should include, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred.

8. For the purposes of the Convention "inspector" should mean any public official with the responsibility for inspecting any aspect of seafarers' working and living conditions.

II. Organization of inspection

9. (1) Each Member for which the Convention is in force should maintain a system of inspection of seafarers' working and living conditions.

(2) The central coordinating authority should coordinate inspections wholly or partly concerned with seafarers' working and living conditions and establish principles to be observed.

(3) The central coordinating authority may authorize other organizations to carry out the inspection of seafarers' working and living conditions on its behalf; such organizations should be either public or recognized by the central coordinating authority as competent and independent. The responsibility for the inspections should in all cases rest upon the central coordinating authority.

III. Annual inspection

10. Every Member should ensure that all ships registered in its territory are inspected annually to verify that the working and living conditions on board conform to national laws or regulations.

IV. Status, duties and powers of inspectors

11. Every Member which has ratified the Convention should appoint inspectors qualified for the performance of their duties and take the necessary steps to satisfy itself that inspectors are available in sufficient number to secure the effective discharge of their duties.

12. Inspectors, nominated inspectors or authorized organizations provided with proper credentials should be empowered:

- (a) to board a ship registered in the territory of the Member or enter other premises liable to inspection, freely and without previous notice at any hour of the day or night; however, they should not enter the living quarters of the ship, unless authorized to do so by the occupants; and
- (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed.

13. Inspectors, nominated inspectors or authorized organizations should be empowered to take steps with a view to remedying any deficiency observed which they have reasonable cause to believe constitutes a threat to the health or safety of seafarers.

14. In the event of a significant danger to the health or safety of seafarers, inspectors, nominated inspectors or authorized organizations should be empowered to take measures with immediate executory force. Under conditions prescribed by the central coordinating authority and subject to any right to appeal to a legal or administrative authority, they should be empowered to prohibit any ship from leaving port until necessary measures have been taken. Such measures should not result in the ship being unreasonably detained or delayed.

15. When an inspection is conducted under this Convention all reasonable efforts should be made to avoid a ship being unduly detained or delayed. If a ship is unduly detained or delayed, the shipowner or operator should be entitled to compensation for any loss or damage suffered. In any instance of alleged undue detention or delay the burden of proof should lie with the shipowner or operator of the ship.

V. Penalties

16. (1) Adequate penalties for violations of the legal provisions enforceable by inspectors and for obstructing inspectors in the performance of their duties should be provided for by national laws or regulations and effectively enforced.

(2) It should be left to the discretion of inspectors to give warnings and advice instead of instituting or recommending proceedings.

VI. Reports

17. (1) Inspectors should submit a report of each inspection to the central coordinating authority. One copy should be furnished to the master of the ship and another to the seafarers on board or their representatives.

(2) In case of an inspection pursuant to a major incident, the report should be made as soon as practicable but not later than one month following the conclusion of the inspection.

18. The central coordinating authority should maintain records of inspections of working and living conditions and publish an annual report on the work of the inspection services under its coordination. This report should be published within a reasonable time after the end of the year to which it relates and in any case within six months.

Proposed Conclusions with a view to a Recommendation

I. General

19. The provisions of the proposed Recommendation should be applied in conjunction with those of the proposed Convention.

II. Cooperation and coordination

20. The central coordinating authority should make appropriate arrangements to promote effective cooperation between public and other institutions concerned with seafarers' working and living conditions.

21. To ensure cooperation between the inspectors and shipowners and seafarers and their respective organizations, and in order to maintain and improve the working and living conditions of seafarers, the central coordinating authority should from time to time consult the representatives of such organizations as to the best means of attaining these ends. Such consultation should be held on a regular basis and through tripartite committees on labour inspection.

III. Organization of inspection

22. The central coordinating authority and any other service or authority whose function is wholly or partly concerned with the inspection of seafarers' working and living conditions should have the resources necessary to fulfil their functions.

23. The number of inspectors should be sufficient to secure the effective discharge of their duties and should be determined with due regard to:

- (a) the importance of the duties which the inspectors have to perform, in particular —
 - (i) the number, nature and size of ships liable to inspection; and
 - (ii) the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and

(c) the practical conditions under which inspection must be carried out in order to be effective.

24. The system of inspection of seafarers' working and living conditions should include the following functions:

- (a) securing the enforcement of the legal provisions relating to working and living conditions and the protection of seafarers, such as provisions relating to minimum age, medical examination, articles of agreement, food and catering, crew accommodation, hours of work, manning, freedom of association, payment of wages, prevention of occupational accidents, medical care, sickness and injury benefits, repatriation, and other connected matters, in so far as such provisions are enforceable by inspectors or the central coordinating authority; and
- (b) bringing to the attention of the central coordinating authority any deficiency or abuse not specifically covered by existing legal provisions and submitting proposals for the improvement of laws and regulations.

25. The central coordinating authority should:

- (a) establish simple procedures to enable it to receive information in confidence concerning possible infringements of legal provisions presented by seafarers directly or through representatives;
- (b) enable inspectors, nominated inspectors or authorized organizations to investigate such matters promptly;
- (c) enable masters to call for an inspection when they consider it necessary or are requested to do so by a majority of the crew; and
- (d) supply technical information and advice to shipowners and seafarers concerning the most effective means of complying with the legal provisions, and of improving seafarers' working and living conditions.

IV. Status, duties and powers of inspectors

26. Inspectors should have status and conditions of service such that they are independent of changes of government and of improper external influences.

27. (1) Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, inspectors should be recruited, inter alia from amongst the seafarers or those with maritime education, having regard to their qualifications for the performance of their duties. They should have adequate knowledge of seafarers' working and living conditions and of the English language, and should have completed adequate training.

(2) The means for ascertaining such qualifications should be determined by the central coordinating authority.

28. Measures should be taken to give inspectors appropriate further training during their employment.

29. Each Member should take the necessary measures so that duly qualified technical experts and specialists may be called upon, as needed, to assist in the work of inspectors.

30. Inspectors should not be entrusted with duties which might, because of their number or nature, interfere with effective inspection of working and living conditions or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties.

31. All inspectors should be furnished with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.

32. Inspectors, nominated inspectors or authorized organizations provided with proper credentials should be empowered:

- (a) to question the master, seafarer or any other person, including the shipowner or the shipowner's representative, on any matter concerning the application of the legal

provisions. The person being questioned should have the right to request the presence of a witness of that person's choice;

- (b) to require the production of any books, log books, registers, certificates or other information or documents which are directly related to matters subject to inspection, in order to see that they are in conformity with the legal provisions and to make copies;
- (c) to enforce the posting of notices required by the legal provisions; and
- (d) to take or remove for purposes of analysis samples of products, cargo, drinking-water, provisions, and materials and substances used or handled, subject to the shipowner or the representative of the shipowner, or where appropriate the seafarer, being notified of any of the above being removed or taken for such purpose. The shipowner or a representative of the shipowner, and where appropriate, the seafarer should be present at the time the sample is taken. The amount of such a sample should be properly recorded.

33. On the occasion of a ship inspection, inspectors, nominated inspectors or authorized organizations should, prior to the commencement of the inspection, provide notification of their presence to the master and, where appropriate, the seafarers or their representatives.

34. The central coordinating authority should be notified of any occupational injuries or diseases occurring on board a ship in such cases and in such manner as may be prescribed by national laws or regulations.

35. Inspectors should:

- (a) be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect;
- (b) subject to appropriate penalties or disciplinary measures, not reveal, even after leaving the service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties;
- (c) treat as confidential the source of any complaint alleging a danger or deficiency in relation to working and living conditions or an infringement of legal provisions and give no intimation to the shipowner or the shipowner's representative that an inspection was made as a consequence of such a complaint; and
- (d) have discretion, following an inspection, to bring to the attention of the shipowner or the master matters which may seriously affect the safety and health of those on board ship and which are within the proper discretion of the shipowner or the master to regulate.

V. *Reports*

36. The annual report published by the central coordinating authority in accordance with point 18 of the Proposed Conclusions should contain:

- (a) a list of laws and regulations in force relevant to seafarers' working and living conditions and any amendments which have come into operation during the year;
- (b) details of the organization of the system of inspection referred to in point 9;
- (c) statistics of ships liable to inspection and ships actually inspected;
- (d) statistics of seafarers subject to the laws and regulations referred to in subparagraph (a);
- (e) statistics and information on infringements of legislation, penalties imposed and cases of detention of ships; and
- (f) statistics of employment injuries and occupational diseases on board ships.

37. Reports should be drawn up in such a manner and should deal with such subject matter as may from time to time be prescribed by the central coordinating authority.

Discussion by the Tripartite Meeting in plenary sitting

[The report of the Committee on Labour Inspection was considered by the Meeting at its sixth plenary sitting on 9 December 1994.]

Mr. Hamilton (Government delegate, United Kingdom; Reporter of the Committee), in presenting the report, explained that it dealt with two of the Meeting's agenda items: revision of the Labour Inspection (Seamen) Recommendation, 1926 (No. 28), and the partial revision of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). With reference to Recommendation No. 28, the Committee recommended that the Conference should adopt both a Convention and a Recommendation concerning the inspection of seafarers' working and living conditions, and that these should supersede the current instrument. He said that whether or not the proposed new instruments should be limited to flag state control or expanded to port state control caused considerable debate, but the Conclusions only dealt with flag state control.

Mr. Cox (Shipowner delegate, United States; Vice-Chairman of the Committee) said that the Shipowner members had discussed the issues raised in a spirit of cooperation, professionalism and a desire to take the correct action. This approach had prevailed throughout the Meeting. Although the Shipowner members at the outset wanted a Recommendation, the Committee had agreed on Proposed Conclusions with a view both to a Convention and a supplementary Recommendation. The agreed Conclusions were acceptable to the Shipowners even if they were a bit verbose.

Mr. Legouas (Seafarer delegate, France; Vice-Chairman of the Committee) said that the Seafarer members had comments both on what had been done and on what remained to be done. They noted that the fact that both agenda items had been discussed by the same Committee was not pure chance, and it was unfortunate that many members of the Committee had not made any link between the two instruments. The Seafarer members supported the transformation of Recommendation No. 28 into two instruments — a Convention and a Recommendation. The principle of annual inspection of ships by member States was considered important. The Seafarer members noted that the systematic recourse to classification societies for inspections was not a panacea and had been proven deficient by numerous examples. They also felt that a certificate was necessary for making inspections effective. Though certain governments had opposed port state control provisions in the Convention, the Seafarers would be in favour of such provisions being included at the Conference.

Mr. Roovers (Government delegate, Netherlands; Chairman of the Committee), noting that the two Vice-Chairmen had given a clear analysis of their viewpoints, thanked them, as well as the Chairmen of the two working groups established to deal with Convention No. 147 and Recommendation No. 28, for their work. He said that although the Committee, in retrospect, did not have the most difficult issues to discuss, it did have two of the four agenda items. This, and the sheer number of amendments introduced, had placed a considerable burden on the participants. However, the final product was a good one. The proposals should be carefully considered before the Conference. In particular, concerns had been voiced as regards the requirement of annual inspections. The product was well balanced and he commended it — including both the report and the Conclusions — to the plenary for adoption.

Mr. Maassen (Government delegate, Germany) drew attention to the Proposed Conclusions concerning labour inspection as regards the term "registered in the territory of the Member". He noted that the representative of Germany participating in the Committee on Wages had raised the point that the wording should instead read "flying the flag of a member State", and that the Legal Adviser was to investigate this matter so that it could be addressed in the report prepared by the Office for the Conference. He expressed his hope that this could also be done with regard to the proposed Convention on labour inspection.

The Meeting then unanimously adopted the report of the Committee on Labour Inspection, along with the Proposed Conclusions concerning the inspection of seafarers' working and living conditions.

III. Proposed texts

The texts of a proposed Convention and a proposed Recommendation concerning the inspection of seafarers' working and living conditions are given below. The texts are based on the Conclusions adopted by the Tripartite Meeting on Maritime Labour Standards, rearranged and modified by the Office, where it was felt necessary to avoid repetition and inconsistencies. In preparing the texts, the Office has made an effort to ensure that they retain the substance of the points adopted by the Meeting. However, when it was felt that they could be clarified or improved, the Office has made the relevant changes; an explanation of these changes is given in the following paragraphs.

Proposed Convention

The Office draws the attention of the Conference to the different views expressed by the Tripartite Meeting on the possible inclusion of port state control provisions in the proposed instruments concerning the inspection of seafarers' working and living conditions (see in particular paragraphs 50-70 of the report of the Technical Committee). In the report prepared for the Meeting the Office had submitted the following proposal on this question: "Nothing in the Convention should be deemed to limit the right of any State to exercise its jurisdiction, including inspection powers, over foreign-registered ships in accordance with the relevant rules of international law." As reflected in the report of the Committee, some Government members recommended the inclusion of specific port state control provisions, while others opposed it. The Seafarer members of the Committee were in favour of a separate Recommendation to cover this question (see paragraph 66 of the report), while the Shipowner members supported the concept of port state control in general but considered that further reflection on this important issue was necessary (see paragraph 67 of the report).

Bearing in mind the discussions of the Committee, the Conference may wish to consider whether this matter should again be discussed with a view to the inclusion of additional provisions on port state control either in the proposed Convention or in the proposed Recommendation, or in another form (for example an additional Recommendation or a resolution). It also invites reflection on the practicability of having the law of the inspecting State apply to foreign-registered ships.

Scope and definitions¹

The Office has made changes to point 4(1) of the Conclusions adopted by the Tripartite meeting (new Article 1, paragraph 1) because, while ILO maritime instruments have traditionally referred to ships "registered in the territory", several Government participants in the Meeting had expressed concern that this was not an appropriate term in all cases. They did not wish to be held accountable for ships that were still on the registry of their country but were outside their effective jurisdiction and control as regards certain matters covered by the proposed Convention. The particular difficulty in some countries is that a ship might be on the register (albeit suspended) of one country for certain purposes but flying the flag of another country (and of course also registered there), as in the case of some bareboat charters. A bareboat charter may result in a split in jurisdiction as regards real rights (e.g. liens to cover wage claims) and non-real rights (e.g. crew safety matters). The Office has therefore proposed adding text to permit identification of the State that would have responsibility as regards a

¹ In this Article, and throughout the texts of the Convention and Recommendation, the Office has attempted to use gender-neutral terminology. This has not always been possible, but the text should always be considered to apply equally to both men and women.

particular ship for a particular purpose. For both real rights and non-real rights to be fully protected, the proposed Convention would have to be in force for both States involved in a bareboat charter. In order to avoid casting possible doubt on ILO maritime instruments that are already in force, the Office prefers proposing a separate stipulation to deal with the exceptional case rather than departing from the usual term "registered in the territory".

In point 8 of the Proposed Conclusions adopted by the Meeting the definition of "inspector" is limited to any *public* official with the responsibility for inspecting any aspect of seafarers' working and living conditions. According to point 9(3) of the Conclusions, the central coordinating authority may authorize both public and private organizations to inspect on its behalf. In Article 1(7)(b) the Office has therefore changed the definition of "inspector" to better reflect this. This definition will also include "nominated inspectors or authorized organizations" referred to in points 12, 13, 32 and 33 of the Conclusions. Consequently, the term "nominated inspectors and authorized organizations" has been deleted from the text.

The term "seafarers' working and living conditions" was not defined in the Proposed Conclusions adopted by the Meeting. Point 24 of the Proposed Conclusions adopted (which is part of the Proposed Conclusions with a view to a Recommendation) provides some guidance by indicating the functions that a system of inspection of seafarers' working and living conditions should include. The Conference may consider the possibility of including a definition of "seafarers' working and living conditions" in the Part of the proposed Convention entitled "Scope and definitions".

Annual inspection

The Proposed Conclusions with a view to a Convention submitted by the Office to the Meeting included the following: "Where no deficiencies are found in the course of the inspection, the central coordinating authority should issue a certificate of conformity in a national language and in English" (point 12(2)). While the Meeting agreed to maintain a provision for annual inspection of seafarers' working and living conditions, it deleted the provision on a certificate of conformity.

The Office considers that this issue might merit further examination by the Conference. An alternative to the original Office proposal could be a "document of compliance" issued by the central coordinating authority on seafarers' working and living conditions on board ship. Such a document, issued in the national and an international language, could for example, have a five-year period of validity to show conformity with national laws or regulations, with possible provision for annual endorsement or review in accordance with established national procedures. The annual endorsement or review could be considered equivalent to the annual inspection provision now contained in the proposed Convention.

Organization of inspection

Bearing in mind that the Proposed Conclusions adopted by the Tripartite Meeting provided for the central coordinating authority to authorize other organizations to carry out the inspection of seafarers' working and living conditions on its behalf or to nominate inspectors for this purpose, the Office is of the view that the use of these authorized organizations should be public knowledge. It is proposed that such organizations should be listed in the report provided for in Article 8, paragraph 2, of the proposed text (points 18 and 36 of the Conclusions). The provision appears as Article 2, paragraph 3, of the proposed Convention and Paragraph 17(g) of the proposed Recommendation.

Status, duties and powers of inspectors

Section IV of the Proposed Conclusions prepared by the Office with a view to a Convention concerning the status, duties and powers of inspectors included provisions on the

status of inspectors, their stability of employment and their independence of changes of government and of improper external influences (point 13(1)). Similarly, point 21(a), (b) and (c) of the above Proposed Conclusions provided that inspectors should not have any direct or indirect interest in any operation which they are called upon to inspect, that they should be bound on pain of penalties or disciplinary measures not to reveal, even after leaving the service, commercial secrets, etc. which may have come to their knowledge in the course of their duties, and that they should treat as confidential the source of any complaint alleging a danger or deficiency in relation to working and living conditions. The Tripartite Meeting decided that these provisions should be included in the Proposed Conclusions with a view to a Recommendation (points 26 and 35(a), (b) and (c)).

The Office is of the opinion that the above provisions should be further considered by the Conference given the importance, for fair and objective inspections, of the independence of inspectors and the stability of their employment, the need for inspectors (or recognized organizations) not to have any direct or indirect interest in any operation they are called on to inspect, and their confidential treatment of the source of any complaint alleging a danger or deficiency. Accordingly, the Conference may wish to consider the need to include the above provisions in the proposed Convention.

Article 6, paragraph 2, of the proposed Convention (see point 15 of the Proposed Conclusions adopted by the Meeting) provides for entitlement of the shipowner or operator to compensation if the ship is unreasonably detained or delayed during inspection. The Conference may note that the Article makes no reference to who would be responsible for settling the question of entitlement or for paying compensation. The Office further notes that the second sentence of the provisions may dissuade detention even when it is necessary to remedy deficiencies found in seafarers' working and living conditions.

Reports

Point 17(1) of the Proposed Conclusions adopted by the Meeting provided for an inspector to submit a report of each inspection to the central coordinating authority, to the master of the ship and to the seafarers on board or their representatives. In Article 9, paragraph 1, of the proposed Convention the Office proposes that the copy to be furnished to the seafarers be posted on the ship's notice board for the information of all the seafarers on board.

The Office would like to draw the attention of the Conference to the difficulties encountered by member States which have ratified the Labour Inspection Convention, 1947 (No. 81), in complying with the provision concerning the publication of the annual report provided for in Article 20 of that Convention. Similar provisions are included in Article 8 of the proposed Convention. The Conference may wish to take note of the above difficulties with a view to considering alternative proposals for the publication of the report by the central coordinating authority. In addressing the above issue, the Conference may also wish to note the difficulty which may arise in complying with the provision in the proposed Article 9, paragraph 2, requiring that following an inspection pursuant to a major incident a report be submitted *one month* after the conclusion of the inspection.

Proposed Recommendation

The last sentence of point 21 of the Proposed Conclusions adopted by the Tripartite Meeting provided for consultation of shipowners' and seafarers' organizations on a regular basis and through tripartite committees on labour inspection. Recognizing that in some countries other types of tripartite bodies may be involved, the Office proposes that the form of these consultations should be determined by the central coordinating authority after consulting shipowners' and seafarers' organizations. The Office proposal is reflected in Paragraph 2 of the proposed Recommendation.

PROPOSED TEXTS

(English version)

The following are the English versions of (A) the proposed Convention and (B) the proposed Recommendation concerning the inspection of seafarers' working and living conditions, which are submitted as a basis for a single discussion, at the 84th (Maritime) Session of the Conference, of the first item on the agenda.

A. Proposed Convention concerning the inspection of seafarers' working and living conditions

The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International Labour
Office and having met in its Eighty-fourth Session on ... 1996, and
Noting the changes in the nature of the shipping industry and, as a consequence thereof,
the changes in seafarers' working and living conditions since the Labour Inspection
(Seamen) Recommendation, 1926, was adopted, and
Recalling the provisions of the Labour Inspection Convention and Recommendation, 1947,
the Labour Inspection (Mining and Transport) Recommendation, 1947, and the
Merchant Shipping (Minimum Standards) Convention, 1976, and
Recalling the entry into force of the United Nations Convention on the Law of the Sea,
1982, on 16 November 1994, and
Having decided upon the adoption of certain proposals with regard to the revision of the
Labour Inspection (Seamen) Recommendation, 1926, which is the first item on the
agenda of the session, and
Having determined that these proposals shall take the form of a international Convention,
adopts, this ... day of ... of the year one thousand nine hundred and ninety-six, the following
Convention, which may be cited as the Labour Inspection (Seafarers) Convention, 1996:

PART I. SCOPE AND DEFINITIONS

Article 1

1. Except as otherwise provided in this Article, this Convention applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of the Member and is engaged in the transport of cargo or passengers for the purpose of trade or is employed for any other commercial purpose. For the purpose of this Convention, a ship that is on the register of two Members is deemed to be registered in the territory of the Member whose flag it flies, except to the extent that the other Member retains jurisdiction over the ship.

2. National laws or regulations shall determine which ships are to be regarded as seagoing ships for the purpose of this Convention.

3. This Convention applies to seagoing tugs.

4. This Convention does not apply to:

PROPOSED TEXTS

(French version)

The following are the French versions of (A) the proposed Convention and (B) the proposed Recommendation concerning the inspection of seafarers' working and living conditions, which are submitted as a basis for a single discussion, at the 84th (Maritime) Session of the Conference, of the first item on the agenda.

A. Projet de convention concernant l'inspection des conditions de travail et de vie des gens de mer

La Conférence générale de l'Organisation internationale du Travail,
Convoquée à Genève par le Conseil d'administration du Bureau international du Travail,
et s'y étant réunie le 1996, en sa quatre-vingt-quatrième session;
Notant les changements survenus dans la nature du secteur maritime et les changements
qui en résultent pour les conditions de travail et de vie des gens de mer depuis que
la recommandation sur l'inspection du travail (gens de mer), 1926, a été adoptée;
Rappelant les dispositions de la convention et de la recommandation sur l'inspection du
travail, 1947, de la recommandation sur l'inspection du travail (mines et transports),
1947, et de la convention sur la marine marchande (normes minima), 1976;
Rappelant l'entrée en vigueur, en date du 16 novembre 1994, de la Convention des
Nations Unies sur le droit de la mer, 1982;
Après avoir décidé d'adopter diverses propositions relatives à la révision de la
recommandation sur l'inspection du travail (gens de mer), 1926, question qui
constitue le premier point à l'ordre du jour de la session;
Après avoir décidé que ces propositions prendraient la forme d'une convention
internationale,
adopte, ce ... jour de ... mil neuf cent quatre-vingt-seize, la convention ci-après, qui sera
dénommée Convention sur l'inspection du travail (gens de mer), 1996.

PARTIE I. CHAMP D'APPLICATION ET DÉFINITIONS

Article 1

1. Sous réserve des dispositions contraires figurant dans le présent article, la présente convention s'applique à tout navire de mer immatriculé dans le territoire du Membre, de propriété publique ou privée, affecté, pour des fins commerciales, au transport de marchandises ou de passagers ou utilisé à d'autres fins commerciales. Aux fins de la convention, un navire qui est immatriculé dans le territoire de deux Membres est considéré comme étant immatriculé dans le territoire de celui dont il bat le pavillon sauf dans la mesure où l'autre Membre continue d'exercer sa juridiction sur le navire.

2. La législation nationale déterminera quels navires seront réputés navires de mer aux fins de la présente convention.

3. La présente convention s'applique aux remorqueurs de mer.

4. La présente convention ne s'applique pas:

- (a) ships primarily propelled by sail, whether or not they are fitted with auxiliary engines;
- (b) small vessels and, when not engaged in navigation, vessels such as oil rigs and drilling platforms. The decision as to which vessels are covered by this subparagraph shall be taken by the central coordinating authority in consultation with the most representative organizations of shipowners and seafarers.

5. To the extent the central coordinating authority deems it practical, after consulting the representative organizations of fishing vessel owners and fishermen, the provisions of this Convention shall apply to maritime fishing vessels.

6. In the event of any doubt as to whether or not any ships are to be regarded as engaged in commercial maritime operations or commercial maritime fishing for the purpose of this Convention, the question shall be determined by the central coordinating authority after consulting the organizations of shipowners, seafarers and fishermen concerned.

7. For the purpose of this Convention;

- (a) the term "central coordinating authority" means a minister, government department or other authority having power to issue and supervise the implementation of regulations, orders or other instructions having the force of law in respect of inspection of seafarers' working and living conditions in relation to any ship registered in the territory of the Member;
- (b) the term "inspector" means any public official with responsibility for inspecting any aspect of seafarers' working and living conditions as well as any other person performing an inspection for an institution or organization authorized by the central coordinating authority in accordance with Article 2, paragraph 3;
- (c) the term "legal provisions" includes, in addition to laws and regulations, arbitration awards and collective agreements upon which the force of law is conferred;
- (d) the term "seafarers" means persons who are employed in any capacity on board a seagoing ship to which the Convention applies. In the event of any doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the central coordinating authority after consulting the organizations of shipowners and seafarers concerned.

PART II. ORGANIZATION OF INSPECTION

Article 2

1. Each Member for which the Convention is in force shall maintain a system of inspection of seafarers' working and living conditions.

2. The central coordinating authority shall coordinate inspections wholly or partly concerned with seafarers' working and living conditions and shall establish principles to be observed.

3. The central coordinating authority shall in all cases be responsible for the inspection of seafarers' working and living conditions. It may authorize public institutions or other organizations it recognizes as competent and independent to carry out inspections of seafarers' working and living conditions on its behalf.

- a) aux navires dont la voile est le principal moyen de propulsion, qu'ils soient ou non équipés d'une machine auxiliaire;
- b) aux navires de faible tonnage ni aux navires tels que les plates-formes de forage et d'exploitation quand ils ne sont pas utilisés pour la navigation. Il incombera à l'autorité centrale de coordination de décider, en consultation avec les organisations les plus représentatives des armateurs et des gens de mer, quels sont les navires relevant du présent alinéa.

5. Pour autant que l'autorité centrale de coordination le juge réalisable, après consultation des organisations représentatives des armateurs à la pêche et des pêcheurs, les dispositions de la convention s'appliqueront aux bateaux de pêche maritime commerciale.

6. En cas de doute sur la question de savoir si un navire doit être considéré comme affecté à l'exploitation maritime commerciale ou à la pêche maritime commerciale aux fins de la convention, la question sera réglée par l'autorité centrale de coordination, après consultation des organisations d'armateurs, de gens de mer et de pêcheurs intéressés.

7. Aux fins de la convention:

- a) l'expression "autorité centrale de coordination" désigne le ministre, le service gouvernemental ou toute autre autorité habilitée à édicter des arrêtés, règlements ou autres instructions ayant force obligatoire pour l'inspection des conditions de travail et de vie des gens de mer, concernant tout navire immatriculé dans le territoire du Membre, et à en surveiller l'application;
- b) le terme "inspecteur" désigne tout fonctionnaire public chargé d'inspecter les conditions de travail et de vie des gens de mer, ainsi que toute autre personne chargée de procéder à de telles inspections pour une institution ou une organisation autorisée conformément aux dispositions de l'article 2, paragraphe 3;
- c) l'expression "dispositions légales" couvre, outre la législation nationale, les sentences arbitrales et les conventions collectives ayant force obligatoire;
- d) l'expression "gens de mer" désigne les personnes employées, à quelque titre que ce soit, à bord d'un navire de mer auquel la convention s'applique. En cas de doute sur les personnes devant, aux fins de la présente convention, être considérées comme des gens de mer, la question sera réglée par l'autorité centrale de coordination après consultation des organisations d'armateurs et de gens de mer intéressés.

PARTIE II. ORGANISATION DE L'INSPECTION

Article 2

1. Tout Membre auquel s'applique la convention doit assurer un système d'inspection des conditions de travail et de vie des gens de mer.

2. L'autorité centrale de coordination devra coordonner les inspections entièrement ou partiellement consacrées aux conditions de travail et de vie des gens de mer, et établir les principes à respecter.

3. L'autorité centrale de coordination assume dans tous les cas la responsabilité de l'inspection des conditions de travail et de vie des gens de mer. Elle peut autoriser des institutions publiques ou d'autres organisations privées auxquelles elle reconnaît la compétence et l'indépendance nécessaires à procéder, en son nom, à une telle inspection.

Article 3

Each Member shall ensure that all ships registered in its territory are inspected annually to verify that the working and living conditions on board conform to national laws or regulations.

Article 4

Each Member shall appoint inspectors qualified for the performance of their duties and shall take the necessary steps to satisfy itself that inspectors are available in sufficient number to secure the effective discharge of their duties.

Article 5

Inspectors provided with proper credentials shall be empowered:

- (a) to board a ship registered in the territory of the Member or enter other premises liable to inspection, freely and without previous notice at any hour of the day or night; however, they should not enter the living quarters of a ship unless authorized to do so by the occupants;
- (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the legal provisions are being strictly observed;
- (c) to take steps with a view to remedying any deficiency observed which they have reasonable cause to believe constitutes a threat to the health or safety of seafarers;
- (d) to take measures with immediate executory force in the event of a significant danger to the health or safety of seafarers; and
- (e) under conditions prescribed by the central coordinating authority and subject to any right of appeal to a judicial or administrative authority, to prohibit any ship from leaving port until necessary measures have been taken. The ship shall not be unreasonably detained or delayed.

Article 6

1. When an inspection is conducted or when measures are taken under this Convention, all reasonable efforts shall be made to avoid a ship being unreasonably detained or delayed.

2. If a ship is unreasonably detained or delayed, the shipowner or operator of the ship shall be entitled to compensation for any loss or damage suffered. In any instance of alleged unreasonable detention or delay, the burden of proof shall lie with the shipowner or operator of the ship.

PART III. PENALTIES

Article 7

1. Adequate penalties for violations of the legal provisions enforceable by inspectors and for obstructing inspectors in the performance of their duties shall be provided for by national laws or regulations and shall be effectively enforced.

2. Inspectors shall have the discretion to give warnings and advice instead of instituting or recommending proceedings.

Article 3

Tout Membre devra s'assurer que tous les navires immatriculés dans son territoire sont soumis à une inspection annuelle pour vérifier que les conditions de travail et de vie à bord sont conformes à la législation nationale.

Article 4

Tout Membre devra désigner des inspecteurs qualifiés pour exercer les fonctions dont ils sont chargés et prendre les mesures nécessaires pour s'assurer qu'ils sont en nombre suffisant pour s'en acquitter avec efficacité.

Article 5

Les inspecteurs, munis de pièces justificatives de leurs fonctions, seront autorisés:

- a) à monter à bord des navires immatriculés dans le territoire du Membre ou à pénétrer dans tous autres locaux assujettis à l'inspection, librement et à l'improviste, à toute heure du jour et de la nuit, étant entendu qu'ils ne pourront entrer dans les parties habitables du navire sans y avoir été autorisés par leurs occupants;
- b) à procéder à tous examens, contrôles ou enquêtes qu'ils jugent nécessaires pour s'assurer que les dispositions légales sont effectivement observées;
- c) à prendre des mesures appropriées pour remédier aux carences constatées dont ils peuvent avoir un motif raisonnable de considérer qu'elles constituent une menace pour la santé ou la sécurité des gens de mer;
- d) en cas de danger significatif pour la santé ou la sécurité des gens de mer, à prendre des mesures immédiatement exécutoires;
- e) dans les conditions prescrites par l'autorité centrale de coordination, et sous réserve de tout droit de recours devant l'autorité administrative ou l'autorité judiciaire, à interdire au navire de quitter le port jusqu'à ce que les dispositions nécessaires aient été prises, étant entendu que le navire ne devra pas être indûment retenu ou retardé.

Article 6

1. Lorsqu'il est procédé à une inspection ou lorsque des mesures sont prises conformément aux dispositions de la présente convention, tous les efforts raisonnables devront être déployés pour éviter que le navire ne soit indûment retenu ou retardé.

2. L'armateur ou l'exploitant du navire pourra prétendre à une compensation pour tout préjudice ou perte qui résulterait d'une telle immobilisation ou d'un tel retard indu, la charge de la preuve lui incombant.

PARTIE III. SANCTIONS

Article 7

1. Des sanctions appropriées pour violation des dispositions légales dont l'application incombe aux inspecteurs et pour obstruction faite aux inspecteurs dans l'exercice de leurs fonctions doivent être prévues par la législation nationale et effectivement appliquées.

2. Les inspecteurs seront libres de donner des avertissements et des conseils au lieu d'intenter ou de recommander des poursuites.

PART IV. REPORTS

Article 8

1. The central coordinating authority shall maintain records of inspections of working and living conditions.
2. It shall publish an annual report on inspection activities, including a list of institutions or organizations authorized to carry out inspections on its behalf. This report shall be published within a reasonable time after the end of the year to which it relates and in any case within six months.

Article 9

1. Inspectors shall submit a report of each inspection to the central coordinating authority. One copy of the report shall be furnished to the master of the ship and another shall be posted on the ship's notice board for the information of the seafarers or sent to their representatives.
2. In case of an inspection pursuant to a major incident, the report shall be submitted as soon as practicable but not later than one month following the conclusion of the inspection.

PART V. FINAL PROVISIONS

Article 10

This Convention supersedes the Labour Inspection (Seamen) Recommendation, 1926.

B. Proposed Recommendation concerning the inspection of seafarers' working and living conditions

The General Conference of the International Labour Organization,
Having been convened at Geneva by the Governing Body of the International Labour Office and having met in its Eighty-fourth Session on ... 1996, and
Having decided upon the adoption of certain proposals with regard to the revision of the Labour Inspection (Seamen) Recommendation, 1926, which is the first item on the agenda of the session, and
Having determined that these proposals shall take the form of a Recommendation supplementing the Labour Inspection (Seafarers) Convention, 1996,
adopts, this ... day of ... of the year one-thousand nine hundred and ninety-six the following Recommendation, which may be cited as the Labour Inspection (Seafarers) Recommendation, 1996:

I. COOPERATION AND COORDINATION

1. The central coordinating authority should make appropriate arrangements to promote effective cooperation between public institutions and other organizations concerned with seafarers' working and living conditions.

PARTIE IV. RAPPORTS

Article 8

1. L'autorité centrale de coordination tiendra des registres des inspections des conditions de travail et de vie.

2. Elle publiera un rapport annuel sur les activités d'inspection, y compris une liste des institutions et organisations autorisées à procéder à des inspections en son nom. Ce rapport devra être publié dans un délai raisonnable, ne dépassant en aucun cas six mois, à partir de la fin de l'année à laquelle il se réfère.

Article 9

1. Les inspecteurs devront, pour toute inspection effectuée, soumettre un rapport à l'autorité centrale de coordination. Une copie de ce rapport sera remise au capitaine du navire, une autre sera affichée sur le tableau d'affichage du navire pour l'information des gens de mer à bord ou communiquée à leurs représentants.

2. Dans le cas d'une inspection faisant suite à un incident majeur, le rapport devra être soumis aussitôt que possible et au plus tard un mois après la conclusion de l'inspection.

PARTIE V. DISPOSITIONS FINALES

Article 10

La présente convention remplace la recommandation sur l'inspection du travail (gens de mer), 1926.

B. Projet de recommandation concernant l'inspection des conditions de travail et de vie des gens de mer

La Conférence générale de l'Organisation internationale du Travail,
Convoquée à Genève par le Conseil d'administration du Bureau international du Travail,
et s'y étant réunie le ... 1996, en sa quatre-vingt-quatrième session;

Après avoir décidé d'adopter diverses propositions relatives à la révision de la
recommandation sur l'inspection du travail (gens de mer), 1926, question qui
constitue le premier point à l'ordre du jour de la session;

Après avoir décidé que ces propositions prendraient la forme d'une recommandation
complétant la convention sur l'inspection du travail (gens de mer), 1996;
adopte, ce jour de ... mil neuf cent quatre-vingt-seize, la recommandation ci-après, qui sera
dénommée Recommandation sur l'inspection du travail (gens de mer), 1996.

I. COOPÉRATION ET COORDINATION

1. L'autorité centrale de coordination devrait prendre les arrangements appropriés pour
favoriser une coopération effective entre les institutions publiques et les autres organisations
intéressées par les conditions de travail et de vie des gens de mer.

2. To ensure cooperation between shipowners, seafarers and their respective organizations and inspectors, and in order to maintain or improve the working and living conditions of seafarers, the central coordinating authority should consult the representatives of such organizations at regular intervals as to the best means of attaining these ends. The manner of such consultation should be determined by the central coordinating authority after consulting with shipowners and seafarers' organizations.

II. ORGANIZATION OF INSPECTION

3. The central coordinating authority and any other service or authority whose function is wholly or partly concerned with the inspection of seafarers' working and living conditions should have the resources necessary to fulfil its functions.

4. The number of inspectors should be sufficient to secure the efficient discharge of their duties and should be determined with due regard to:

- (a) the importance of the duties which the inspectors have to perform, in particular the number, nature and size of ships liable to inspection and the number and complexity of the legal provisions to be enforced;
- (b) the material means placed at the disposal of the inspectors; and
- (c) the practical conditions under which inspections must be carried out in order to be effective.

5. The system of inspection of seafarers' working and living conditions should permit:

- (a) securing the enforcement of the legal provisions relating to the protection of seafarers and their working and living conditions, such as those relating to freedom of association, minimum age, articles of agreement, food and catering, crew accommodation, manning, hours of work, payment of wages, medical examinations, prevention of occupational accidents, medical care, sickness and injury benefits, repatriation and other connected matters, in so far as such provisions are enforceable by inspectors or the central coordinating authority; and
- (b) alerting the central coordinating authority to any deficiency or abuse not specifically covered by existing legal provisions and the submission of proposals to it for the improvement of laws and regulations.

6. The central coordinating authority should:

- (a) establish simple procedures to enable it to receive information in confidence concerning possible infringements of legal provisions presented by seafarers directly or through representatives;
- (b) enable inspectors to investigate such matters promptly;
- (c) enable masters to call for an inspection when they consider it necessary or are requested to do so by a majority of the crew; and
- (d) supply technical information and advice to shipowners and seafarers and organizations concerned as to the most effective means of complying with the legal provisions and of improving seafarers' working and living conditions.

2. En vue d'assurer la coopération entre les inspecteurs et les armateurs, les gens de mer et leurs organisations respectives, et afin de maintenir et d'améliorer les conditions de travail et de vie des gens de mer, l'autorité centrale de coordination devrait consulter à intervalles réguliers les représentants desdites organisations quant aux meilleurs moyens permettant de parvenir à ces objectifs. Les modalités de ces consultations seront déterminées par l'autorité centrale de coordination après consultation des organisations d'armateurs et de gens de mer.

II. ORGANISATION DE L'INSPECTION

3. L'autorité centrale de coordination et tout autre service ou autorité dont les fonctions sont totalement ou partiellement consacrées à l'inspection des conditions de travail et de vie des gens de mer devraient disposer des ressources nécessaires pour exercer leurs fonctions.

4. Le nombre d'inspecteurs devrait être suffisant pour leur permettre de s'acquitter efficacement de leurs fonctions et devrait être déterminé en prenant dûment en considération:

- a) l'importance des tâches leur incombant, en particulier le nombre, la nature et la taille des navires soumis à l'inspection ainsi que le nombre et la complexité des dispositions légales à appliquer;
- b) les moyens matériels mis à la disposition des inspecteurs;
- c) les conditions pratiques dans lesquelles l'inspection doit être effectuée pour être efficace.

5. Le système d'inspection des conditions de travail et de vie des gens de mer devrait permettre:

- a) d'assurer l'application des dispositions légales relatives à la protection des gens de mer et à leurs conditions de travail et de vie, telles que celles concernant la liberté syndicale, l'âge minimum, les contrats d'engagement, l'alimentation et le service de table, le logement de l'équipage, les effectifs, la durée du travail, le paiement des salaires, les examens médicaux, la prévention des accidents du travail, les soins médicaux, les prestations de maladie ou d'accident, le rapatriement et autres questions connexes, dans la mesure où leur application incombe aux inspecteurs ou à l'autorité centrale de coordination;
- b) d'alerter l'autorité centrale de coordination sur tous défauts ou abus que les dispositions légales existantes ne couvrent pas et de saisir de propositions pour l'amélioration de la législation.

6. L'autorité centrale de coordination devrait:

- a) instituer des procédures simples lui permettant d'être saisie de façon confidentielle de toute information relative à des infractions éventuelles aux dispositions légales soumise par les gens de mer directement ou par l'intermédiaire de représentants;
- b) faire en sorte que les inspecteurs puissent mener rapidement leur enquête;
- c) habiliter le capitaine à requérir une inspection lorsqu'il le juge nécessaire ou lorsque la majorité des membres de l'équipage le lui demande;
- d) fournir aux armateurs et aux gens de mer ainsi qu'à toutes autres organisations intéressées des informations et conseils techniques au sujet des moyens les plus efficaces de donner effet aux dispositions légales et d'améliorer les conditions de travail et de vie des gens de mer.

III. STATUS, DUTIES AND POWERS OF INSPECTORS

7. Inspectors should have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.

8. (1) Subject to any conditions for recruitment to the public service which may be prescribed by national laws or regulations, inspectors should have qualifications and adequate training to perform their duties and where possible should have a maritime education or experience as a seafarer. They should have adequate knowledge of seafarers' working and living conditions and of the English language.

(2) The means for ascertaining such qualifications should be determined by the central coordinating authority.

9. Measures should be taken to provide inspectors with appropriate further training during their employment.

10. Each Member should take the necessary measures so that duly qualified technical experts and specialists may be called upon, as needed, to assist in the work of inspectors.

11. Inspectors should not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties.

12. All inspectors should be provided with conveniently situated premises, equipment and means of transport adequate for the efficient performance of their duties.

13. Inspectors provided with proper credentials should be empowered:

- (a) to question the master, seafarer or any other person, including the shipowner or the shipowner's representative, on any matter concerning the application of the legal provisions in the presence of a witness that the person may have requested;
- (b) to require the production of any books, log books, registers, certificates or other information or documents which are directly related to matters subject to inspection, in order to see that they are in conformity with the legal provisions and to make copies;
- (c) to enforce the posting of notices required by the legal provisions; and
- (d) to take or remove the purposes of analysis samples of products, cargo, drinking-water, provisions and materials and substances used or handled. The shipowner or the shipowner's representative, or where appropriate the seafarer, should be notified of any such sample being taken or removed or be present at the time a sample is taken or removed. The amount of such a sample should be properly recorded by the inspector.

14. When commencing a ship inspection, inspectors should provide notification of their presence to the master or person in charge and, where appropriate, to the seafarers or their representatives.

15. The central coordinating authority should be notified of any occupational injuries or diseases affecting seafarers in such cases and in such manner as may be prescribed by national laws or regulations.

16. Inspectors should:

- (a) be prohibited from having any direct or indirect interest in any operation which they are called upon to inspect;

III. STATUT, POUVOIRS ET OBLIGATIONS DES INSPECTEURS

7. Le statut et les conditions de service des inspecteurs devraient les rendre indépendants de tout changement de gouvernement et de toute influence extérieure indue.

8. (1) Sous réserve des conditions auxquelles la législation nationale soumettrait le recrutement au sein du service public, les inspecteurs devraient posséder les qualifications et une formation adéquates pour exercer leurs fonctions et, autant que possible, avoir une expérience de marin ou une formation maritime. Ils devraient posséder une connaissance adéquate des conditions de travail et de vie des gens de mer ainsi que de la langue anglaise.

(2) La manière de vérifier ces qualifications devrait être déterminée par l'autorité centrale de coordination.

9. Des mesures devraient être prises pour assurer aux inspecteurs un perfectionnement approprié en cours d'emploi.

10. Tout Membre devrait prendre les mesures nécessaires pour que les inspecteurs puissent disposer en tant que de besoin de l'assistance d'experts et de techniciens dûment qualifiés dans l'accomplissement de leurs tâches.

11. Les inspecteurs ne devraient pas se voir confier des tâches en nombre ou de nature tels qu'elles soient susceptibles de nuire à une inspection efficace ou de porter préjudice à leur autorité et à leur impartialité vis-à-vis des armateurs, des gens de mer ou de toute autre partie intéressée.

12. Tous les inspecteurs devraient disposer de locaux convenablement situés ainsi que de moyens matériels et de transport adéquats pour leur permettre de s'acquitter de manière efficace de leurs fonctions.

13. Les inspecteurs, munis de pièces justificatives de leurs fonctions, devraient être autorisés:

- a) à interroger le capitaine, les gens de mer ou toute autre personne, y compris l'armateur ou le représentant de l'armateur, sur toute question concernant l'application des dispositions légales, en présence, le cas échéant, de tout témoin que la personne peut avoir demandé;
- b) à demander communication de tous les livres, journaux de bord, registres, certificats ou autres documents ou informations ayant un rapport direct avec l'objet de l'inspection, afin de vérifier qu'ils sont conformes aux dispositions légales, et à en faire des copies;
- c) à veiller à l'affichage des avis requis par les dispositions légales;
- d) à prélever et à emporter pour analyse des échantillons de produits, de marchandises, d'eau potable, de vivres et de matériaux et substances utilisés ou manipulés. L'armateur ou son représentant ou, selon le cas, le marin devraient être avisés de tels prélèvements ou être présents au moment où ils sont effectués ou emportés: la quantité de l'échantillon devrait être correctement notée par l'inspecteur.

14. Les inspecteurs devraient, au moment d'engager l'inspection du navire, informer de leur présence le capitaine ou la personne assumant le commandement et, selon le cas, les gens de mer ou leurs représentants.

15. L'autorité centrale de coordination devrait être avisée de tous accidents du travail ou maladies professionnelles affectant des marins dans les cas et selon la manière prescrits par la législation nationale.

16. Les inspecteurs devraient:

- a) se voir interdire de posséder un intérêt quelconque, direct ou indirect, dans l'ensemble des activités qu'ils sont appelés à contrôler;

- (b) subject to appropriate penalties or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties;
- (c) treat as confidential the source of any complaint alleging a danger or deficiency in relation to working and living conditions or an infringement of legal provisions and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a complaint;
- (d) have discretion, following an inspection, to bring immediately to the attention of the shipowner, the operator of the ship or the master deficiencies which may affect the health and safety of those on board ship.

IV. REPORTS

17. The annual report published by the central coordinating authority in accordance with Article 8, paragraph 2, of the Convention should contain:

- (a) a list of laws and regulations in force relevant to seafarers' working and living conditions and any amendments which have come into operation during the year;
- (b) details of the organization of the system of inspection referred to in Article 2 of the Convention;
- (c) statistics of ships or other premises liable to inspection and of ships and other premises actually inspected;
- (d) statistics of seafarers subject to the laws and regulations referred to in subparagraph (a);
- (e) statistics and information on infringements of legislation, penalties imposed and cases of detention of ships;
- (f) statistics of employment injuries and occupational diseases affecting seafarers; and
- (g) a list of institutions or organizations authorized to inspect seafarers' working and living conditions on its behalf.

18. The reports referred to in Article 9 of the Convention should be drawn up in such a manner and should deal with such subject-matter as may be prescribed by the central coordinating authority.

- b) être tenus, sous peine de sanctions ou de mesures disciplinaires appropriées, de ne pas révéler, même après avoir quitté le service, les secrets commerciaux ou les procédés d'exploitation confidentiels ou les informations de nature personnelle dont ils pourraient avoir eu connaissance dans l'exercice de leurs fonctions;
- c) tenir confidentielle la source de toute plainte alléguant qu'il existe un danger ou des carences dans les conditions de travail et de vie ou qu'il y a infraction aux dispositions légales, et s'abstenir de révéler à l'armateur ou à ses représentants ou à l'exploitant du navire qu'il a été procédé à une inspection à la suite d'une telle plainte;
- d) avoir toute discrétion, à la suite d'une inspection, de porter immédiatement à l'attention de l'armateur, de l'exploitant du navire ou du capitaine les carences pouvant sérieusement porter préjudice à la santé et à la sécurité des personnes à bord.

IV. RAPPORTS

17. Le rapport annuel publié par l'autorité centrale de coordination conformément à l'article 8, paragraphe 2, de la convention devrait inclure:

- a) une liste des lois et des règlements en vigueur relatifs aux conditions de travail et de vie des gens de mer, ainsi que tous les amendements devenus applicables pendant l'année;
- b) des informations détaillées relatives à l'organisation du système d'inspection mentionné à l'article 2 de la convention;
- c) des statistiques des navires ou autres locaux assujettis à l'inspection et des navires ou autres locaux effectivement inspectés;
- d) des statistiques des gens de mer assujettis aux lois et règlements mentionnés à l'alinéa a);
- e) des statistiques et des informations sur les infractions à la législation, les sanctions imposées et les cas où des navires ont été retenus;
- f) des statistiques des accidents du travail et des maladies professionnelles affectant les gens de mer;
- g) une liste des institutions et des organisations habilitées à inspecter en son nom les conditions de travail et de vie des gens de mer.

18. Les rapports prévus à l'article 9 de la convention devraient suivre, en ce qui concerne la présentation et les sujets traités, les prescriptions fixées par l'autorité centrale de coordination.

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